

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DR. JUDY WOOD ON BEHALF OF THE UNITED STATES
OF AMERICA,

Plaintiff/Relator,

-against-

07 CIV 3314 (GBD)

SCIENCE APPLICATIONS INTERNATIONAL, CORP.;
APPLIED RESEARCH ASSOCIATES, INC.; BOEING;
NUSTATS; COMPUTER AIDED ENGINEERING
ASSOCIATES, INC.; DATASOURCE, INC.; GEOSTAATS,
INC.; GILSANZ MURRAY STEFICEK LLP; HUGHES
ASSOCIATES, INC.; AJMAL ABBASI; EDUARDO
KAUSEL; DAVID PARKS; DAVID SHARP; ANIELLE
VENEZANO; JOSEF VAN DYCK; KASPAR WILLIAM;
ROLF JENSEN & ASSOCIATES, INC.;
ROSENWASSER/GROSSMAN CONSULTING
ENGINEERS, P.C.; SIMPSON GUMPERTZ & HEGER, INC.;
S.K. GHOSH ASSOCIATES, INC.; SKIDMORE, OWINGS &
MERRILL, LLP; TENG & ASSOCIATES, INC.;
UNDERWRITERS LABORATORIES, INC.; WISS,
JANNEY, ELSTNER ASSOCIATES, INC.; AMERICAN
AIRLINES; SILVERSTEIN PROPERTIES; AND UNITED
AIRLINES,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS WISS, JANNEY
ELSTNER ASSOCIATES INC. AND ROLF JENSEN & ASSOCIATES, INC.'s
MOTION TO DISMISS THE COMPLAINT**

HINSHAW & CULBERTSON LLP
Attorneys for Defendants
WISS, JANNEY, ELSTNER ASSOCIATES, INC. and
ROLF JENSEN & ASSOCIATES, INC.
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PRELIMINARY STATEMENT

Defendants WISS, JANNEY, ELSTNER ASSOCIATES, INC. (“WJE”) and ROLF JENSEN & ASSOCIATES, INC. (“RJA”) move to dismiss the Complaint, pursuant to Fed. R. Civ. P. 12(b)(1) and 9(b), respectively, and hereby adopt and incorporate herein the arguments set forth in the motion papers submitted by co-defendant APPLIED RESEARCH ASSOCIATES, INC. (“ARA”). As more fully argued therein, plaintiff’s claims are statutorily barred; plaintiff’s fail to state a claim under the provisions of the False Claims Act and set sufficient facts to show the plausibility of her allegations; and plaintiff has failed to allege fraud with particularity. In addition, as also argued therein, plaintiff lacks standing to assert common law claims on behalf of the United States Government. For all of these reasons, plaintiff’s Complaint must be dismissed.

STATEMENT OF FACTS

Defendants refer the Court to defendant ARA memorandum of law in support of its motion to dismiss the Complaint for a full recitation of the facts and applicable law.

In essence, plaintiff brings a claim under the False Claims Act, alleging that defendants manipulated and provided false information to the United States Government during the investigation of the events surrounding the collapse of the World Trade Center on September 11, 2001 conducted by the National Institute of Standards and Technology (“NIST”). (Declaration of Philip Touitou, dated February 15, 2008 (“Touitou Decl.”), ¶ 3). However, the Complaint is devoid of any specific allegations against defendants WJE and RJA. Touitou Decl., ¶ 7.

Defendant WJE is a corporation organized and existing under the laws of the State of Illinois. Touitou Decl., ¶ 4. It is engaged in the business of professional engineering and architecture, and maintains a principal office at 330 Pfingsten Road, Northbrook, Illinois 60062. *Id.* Defendant RJA is also a corporation organized and existing under the laws of the State of

Illinois. Touitou Decl., ¶ 5. It is engaged in the business of engineering, focusing on fire protection, and maintains a principal office at 600 W. Fulton Street, Suite 500, Chicago, Illinois 60661. *Id.* Both WJE and RJA provided consulting services to NIST in regards to inquiries which NIST was conducting and examined artifacts related to that investigation. Touitou Decl., ¶ 6.

Other than general and conclusory allegations raised by plaintiff, there no specific allegations against defendants WJE and RJA concerning their actions and/or omissions from which liability may arise. Therefore, the Complaint should be dismissed against them.

ARGUMENT

POINT I

DEFENDANTS WJE AND RJA JOIN DEFENDANT ARA'S MOTION TO DISMISS ON THE SAME GROUNDS SET FORTH THEREIN

Dismissal of this action is proper because, as more fully argued in the papers filed by co-defendant ARA, the Court lacks subject matter jurisdiction over this lawsuit as a result of the statutory bars under §§ 3730(b)(5) and 3730(e)(4) of the Federal Claims Act. Moreover, plaintiff's general and conclusory allegations, while not only implausible, also fail to state a claim under specific provisions and requirements set forth in the False Claims Act. Finally, plaintiff failed to plead his allegations of fraud with particularity as required by Rule 9(b) of the Federal Rules of Civil Procedure. Finally, plaintiff lacks standing to assert state law claims on behalf of the United States Government. For these reasons, as more fully set forth in the motion papers submitted by co-defendant ARA that are adopted and incorporated herein, WJE and RJA request that the Complaint be dismissed.

CONCLUSION

For the foregoing, as more fully set forth in the papers submitted by ARA in support of its motion to dismiss herein, it is respectfully requested that the Court dismiss the Complaint in its entirety, with prejudice and with costs.

Dated: New York, New York
February 15, 2008

HINSHAW & CULBERTSON LLP

By: 

Philip Tontou

Concepcion A. Montoya

Attorneys for Defendants

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